

DEPARTMENT OF JUSTICE

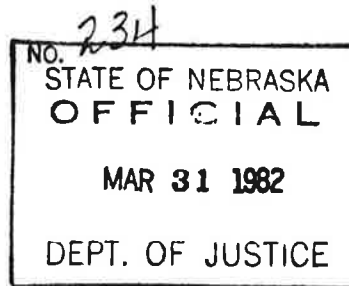
STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

March 30, 1982

PAUL L. DOUGLAS
Attorney General
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Deputy Attorney General
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Vard Johnson
State Senator
State Capitol
Lincoln, NE 68509



Dear Senator Johnson:

This is in response to your letter of March 23, 1982, concerning LB 522A, a bill to appropriate the money necessary to fund LB 522 which, if passed and enacted into law, transfers to the Nebraska Department of Public Welfare all county welfare functions and fiscal responsibilities, effective July 1, 1983. You specifically asked for an opinion as to how many votes are necessary for the passage of 522A. Further, you asked for advice as to the efficacy of an appropriation bill that speaks to a fiscal year one year beyond the ensuing fiscal year.

LB 522A is to appropriate money necessary to fund LB 522, effective July 1, 1983. Article III, Section 22 of the Constitution of Nebraska was amended in 1972 to provide that each Legislature shall make appropriations for the expenses of government and when necessary make further appropriations for deficiencies. Prior to then, Article III, Section 22 stated that the Legislature shall make appropriations for the expenses of government until the expiration of the first fiscal quarter after adjournment of the next regular session. A review of LB 139, Laws of Nebraska, 82nd Legislature, First Session, 1971, which amended Article III, Section 22 shows that the purpose of the amendment was to eliminate the requirement of appropriating into the first quarter of the next session. This amendment was a logical response to the 1970 amendment of Article III, Section 6 which provided for annual sessions of the Legislature. By convening each January in the approximate middle of the fiscal year the Legislature would be in a position to make appropriations for the expenses of government and appropriations for deficiencies. Therefore, it is our opinion that LB 522A would be non-binding and thus premature.


Vard Johnson
March 30, 1982
Page -2-

Obviously the reason that none of the budget bills submitted by the Governor to the 1982 Legislature appropriate dollars for the 1983-84 fiscal year is an intent to conform with Article III, Section 22 cited above. The Governor has submitted a budget for a period of appropriation which would be binding on the Legislature. He has not submitted a budget for fiscal 1983-84 which follows the effective date of LB 522.

In Mekota v. State Board of Equalization and Assessment, 146 Neb. 370 the Supreme Court of Nebraska held that a bill containing an appropriation not included in the Governor's budget could be enacted without a three-fifths vote. The Court referred to Article IV, Section 7 which states: "No appropriations shall be made in excess of the recommendation contained in the budget * * *," and noted that the plural "appropriations" is used. The Court further stated that this would imply a limitation upon increase of amounts named in the budget and required to be therein and not to matters which could not be contemplated or anticipated. The court added that the language would also imply an intention that the limitation was to attach to named subjects of appropriations and not to appropriations generally. We therefore conclude that a three-fifths vote on LB 522A would not be required, but that its passage would not be binding.

Very truly yours,

PAUL L. DOUGLAS
Attorney General


Royce N. Harper
Assistant Attorney General

RNH:kkh

cc: Patrick J. O'Donnell
Clerk of the Legislature